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Open-ended Working Group taking forward multilateral nuclear disarmament negotiations¹

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Taking forward multilateral nuclear disarmament negotiations

Quest of Legal Measures with Specificity and Feasibility for Nuclear Disarmament

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I. Introduction

A. Interpretation of the word “concrete”

1. The primary mandate of this Open Ended Working Group (OEWG) is “to substantively address concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons”³. The word “concrete” here should be interpreted so as to bear two meanings; the legal measures must be (i) specific in their provisions and (ii) feasible to achieve. In terms of “feasibility”, the main requirements should be that a tangible process be achieved within a foreseeable timeframe, and that an appropriate group of countries be prospected to initiate and lead this process.

2. The reason why specificity and feasibility are required as elements of “concrete”-ness would be apparent, when one recalls the history leading to the establishment of this Open-ended Working Group in 2016. At the NPT Review Conference in 2000, Nuclear Weapon States (NWSs) made “an unequivocal undertaking to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament”⁴. In addition, at the 2010 NPT Review Conference, all state parties committed themselves “to pursue policies that are fully compatible with the objective of achieving a world without nuclear weapons”⁵ and affirmed the need “to make special efforts to establish the necessary framework to

¹ Established pursuant to resolution 70/33 of the General Assembly of the United Nations.

² Japan-based NGO.

³ A/RES/70/33


⁴ NPT/CONF.2000/28, P. 14

⁵ NPT/CONF.2010/50 (vol. I), P. 20

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achieve and maintain a world without nuclear weapons”⁶. Despite such general agreements, there was no substantial progress in nuclear disarmament; on the contrary, the modernization of nuclear arsenals openly occurred in NWSs. There is no indication from the NWSs that they are planning or intending to abandon their nuclear arsenals in the near future, nor that they are pursuing negotiations aimed towards the prohibition and elimination of nuclear weapons. For the purpose of breaking such stalemate in nuclear disarmament, the draft final document of the 2015 NPT Review Conference, while never adopted, included a recommendation that an Open-ended Working Group should be established to identify and elaborate effective measures including legal provisions required to achieve and maintain a world without nuclear weapons. Accordingly, the United Nations General Assembly in 2015 adopted resolution 70/33 to establish an Open-ended Working Group taking forward multilateral nuclear disarmament negotiations. Considering the fact that this Open-ended Working Group has been established with such a sense of urgency, the “concrete” measures to be discussed at the Working Group must be such measures that are not only specific but also feasible. In other words, the requested concreteness should embrace both specificity and feasibility, creating the potential to bring about change to the current situation.

B. The ethical aspect of nuclear disarmament

3. One of the pillars of the efforts in recent years to break the stalemate in nuclear disarmament is the so called “humanitarian initiative”. This initiative, which included the organization of three international conferences, contributed to deepening and spreading a common recognition of the catastrophic humanitarian consequences caused by the use of nuclear weapons. It was reaffirmed through these three conferences that “the immediate, medium-term and long-term consequences of a nuclear weapon explosion would be significantly graver than was understood in the past and would not be constrained by national borders but have regional or even global effects, potentially threatening the survival of humanity.”⁷ Both NWSs and the non-NWSs depending on such weapons, agree with this recognition. (The relevance of the latter group of states will be discussed later.) One representative from a nuclear weapon state mentions, “We fully understand the serious consequences of nuclear weapons use and give the highest priority to avoiding their use.”⁸ Also, a joint statement made by non-NWSs depending on such weapons mentions that “the grave humanitarian consequences of a nuclear weapons detonation are clear and not in dispute”⁹. What is implied here is a shared recognition of the unethical nature intrinsic to nuclear weapons use, containing such characteristics as inflicting unnecessary and indiscriminate damage, which is prohibited by international humanitarian law.

4. Another ethical aspect must be recognized in the efforts for multilateral nuclear disarmament negotiations. Article 6 of the NPT provides that state parties pursue disarmament “negotiations in good faith”. It is a phrase reflecting an agreement reached under the premised conscience of state parties. The agreement has come about as the result of negotiations with mutual respect of the equal and sovereign rights among state parties that are placed under various political environments. The ethics of “good faith” in disarmament commitments, for instance, will be demonstrated by the attitude of state parties when they afford an example of good deed without waiting for others doing the

⁶ Ibid.

⁷ A/RES/70/48, Preamble

⁸ Office of the spokesperson, U.S. Department of State Nov.7,2014
<http://www.state.gov/r/pa/prs/ps/2014/11/233868.htm>

⁹ Pre Voting Statement on the three Humanitarian Impact of Nuclear Weapons resolutions, delivered by Australia on behalf of 27 delegations,” 70th UN First Committee, Nov. 2, 2015
http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com15/statements/2November_Australia-27.pdf

same. The Prague speech by the President of the United States in 2009 gained broad aspiration and support because of its ethical ground, referring to a “moral responsibility to act” and calling for a national initiative by saying, “we can lead it, we can start it”¹⁰, even when the difficult job was thought not achievable alone. The restoration of such ethical aspects seems to be needed in order to break the nuclear disarmament stalemate.

5. We make the following proposals based on the aforementioned recognition of concreteness and ethical aspects.

II. Phased Approach to a Comprehensive Nuclear Weapons Convention

A. Phased approach

6. A Comprehensive Nuclear Weapons Convention (CNWC) with provisions for a verification system is a treaty that is essential to attain and maintain a world without nuclear weapons. A CNMC must be a legal instrument with universality, in terms that all NWSs are expected to agree with it and become parties. While it was highlighted and recognized as important in the five point proposal of the UN Secretary General in 2008, hurdles to start negotiations remain high despite the repeated adoption of UNGA resolutions urging such negotiations. Meanwhile, various opinions appeared in reference to the legal framework, including a CNWC, a Nuclear (Weapons) Ban Treaty (NBT), a framework arrangement, and a hybrid arrangement, as was summarized by the New Agenda Coalition¹¹. The “humanitarian initiative” contributed greatly in vitalizing the discussions. Thanks to those public exchanges of views, we are now able to envision a phased approach toward a CNWC without losing sight of the destined target.

7. Based upon the aforementioned principles of “concreteness” and “ethicality”, we propose to antecedently conclude a “Treaty to Prohibit the Use of Nuclear Weapons (Nuclear Use Ban Treaty, or NUBT)”, while considering its relationship with the provisions to be included in the NBT and CNWC. The reason for this is that the NUBT has its own significance which is worth pursuing independently as a first phase legal measure. This approach can utilize the unique advantage of “use ban” in the process toward NBT or CNWC from the viewpoint of “concreteness”, especially of “feasibility”, as is discussed below. Also the first phase achievement will give us visions extended to the second phase and beyond.

8. The reason why we pursue a NUBT as an independent first phase measure is that a distinct difference lies between the “use” of nuclear weapons and their “possession” or “stockpile”. In the “use” of nuclear weapons, the user has a clear intention to inflict “catastrophic humanitarian consequences” upon its foes. However limited the use is, it will cause catastrophic long-term damages to human health, the global environment and social/economic systems. In contrast, neither a “possession” nor a “stockpile” causes such damages.

B. Renewed consideration on a NUBT

9. A NUBT has been discussed for a long time at the UNGA. The UNGA resolution entitled “Convention on the Prohibition of the Use of Nuclear Weapons” (CPUNW) has its 35 years’ history since it appeared for the first time in 1982¹². Over that 35 year period, international relations and the history of negotiations for nuclear disarmament underwent a remarkable change, including the end of the Cold War and the indefinite extension of the

¹⁰ the United States President address in Prague, Apr.5, 2009

¹¹ NPT/CONF.2015/PC.III/WP.18, Apr. 2, 2014

¹² The first resolution is A/RES/37/100C (1982), and the latest resolution is A/RES/70/62 (2015).

NPT. Moreover, in light of the principles of “concreteness” and “ethicality”, which are required of the legal measures that are to be examined in this Open-ended Working Group, pursuing a NUBT on the basis of the United Nations General Assembly resolution on CPUNW might bear the following disadvantages. First, the fact that the CPUNW resolutions continue to call for negotiations at the Conference on Disarmament (CD), which has long been experiencing dysfunction, may cause difficulty in terms of concreteness especially feasibility. Second, the logic of those resolutions, which have been proposed and promoted by India, a nuclear weapon holder outside the NPT, is, “If others do it, then we will do the same.” It must be said that such an attitude lacks the ethical impact required for breaking the current stalemate in nuclear disarmament negotiations. Therefore, this paper will attempt to offer a renewed thought on the realization of a NUBT by means of introducing logics and initial state players that are different from those postulated in the CPUNW resolutions.

10. The most important point in this renewed thought is that constituent nations of nuclear weapon free zones (NWFZs) are specially qualified in requesting the conclusion of a NUBT. These states have chosen the status of non-NWSs by abiding to legally binding regional treaties which are stricter than the NPT. Having established NWFZs as a first step toward a cooperative security system, these states have been requesting NWSs to accede to protocols stipulating legally binding security assurances against the use and threat of use of nuclear weapons; their strict non-nuclear status deserve that request.

11. However, according to the recently renewed knowledge that the use of nuclear weapons will cause catastrophic damages beyond borders and time, these states are not free from such damages caused by the use of nuclear weapons outside the zone. Therefore, it should be said these states are morally qualified to demand a global ban of use of nuclear weapons. Based upon this insight, we propose a “Treaty to Prohibit the Use of Nuclear Weapons” with a new spirit, in which the states parties of NWFZs initiate the negotiation of a NUBT.

12. The possibility may be remote for NWSs to support the NUBT and legally commit themselves to no use in the near future. Even if that is the case, it should be recognized as a legitimate legal request for state parties to NWFZs to pursue the conclusion of a global NUBT applicable to areas beyond the zone, and to demand that all states including NWSs subscribe to it. Such attempts are fully in line with the fundamental objectives underlying the establishment of a NWFZ.

13. Unquestionably the benefits of security from a NUBT will be enjoyed by not only state parties to NWFZ treaties but also by all states and people on the earth. Therefore, any state that acknowledges such benefit is qualified to become an initiator for a NUBT. All states are naturally invited to join the negotiations and the treaty. The reason why we emphasize the special standing for constituent states of NWFZs lies in that we consider important the ethical position of the initiators of multilateral disarmament negotiations at this difficult time.

C. Partial measures

14. The “threat of use” of nuclear weapons alone does not inflict “catastrophic humanitarian consequences”, as long as nuclear weapons are not actually used. However, the “threat of use” shall be prohibited equally as the “use” of nuclear weapons itself. As the Charter of the United Nations stipulates to refrain from both the “use of force” and “threat of force” (Article 2, Item 4), if a certain act is deemed illegal under a treaty, the act of threatening by suggesting that act should be considered illegal as well under the same treaty.

15. A NUBT is, by all means, a partial legal measure. Ever since the adoption of the 2000 NPT Review Conference’s final document, the basic idea that “the total elimination of

nuclear weapons is the only absolute guarantee against the use or threat of use of nuclear weapons”¹³ has repeatedly been confirmed. Bearing in mind the estimation that NWSs will not support and join a NUBT in the near future, this idea remains valid. Also, even if NWSs subscribed to a NUBT, the risk of nuclear detonations by accident or error would not disappear. Taking the above into consideration, concluding a CNWC to assure complete nuclear abolition continues to remain an urgent task.

16. Although a NUBT is a partial measure as is discussed above, it has its significance as a first step measure leading to a CNWC. It is likely to be achieved in a relatively short timeframe because it limits itself to the ban of “use and threat of use” alone and avoids complex negotiations for verification systems that are required to regulate “possession” or “stockpiling”. Still, it will create circumstantial change in nuclear disarmament efforts.

III. NUBT and Non-NWSs Depending on Nuclear Weapons

A. Roles of non-NWSs depending on nuclear weapons in nuclear disarmament

17. Achieving a world without nuclear weapons naturally requires efforts on the part of all states. Having said this, each individual state should be able to identify areas in which or methods through which it can contribute most effectively, as is mentioned in the 2013 Open-ended Working Group report that “States had differentiated roles and functions.”¹⁴ While it goes without saying that NWSs are the actors primarily responsible for eliminating nuclear weapons, there have been arguments emphasizing the specific roles to be played by non-NWSs in the course of the process toward a world without nuclear weapons, as we can see in the 2013 Open-ended Working Group report. The report states that “the Working Group shared the view that non-NWSs had a role in promoting global nuclear disarmament.”¹⁵

18. According to their relationship with nuclear weapons, states can be categorized into the following four groups: (i) NWSs under the NPT, (ii) nuclear armed states outside the NPT, (iii) non-NWSs depending on nuclear weapons, and (iv) non-NWSs constituting NWFZs. As long as the idea of nuclear deterrence is built upon the maintenance of the intention and posture to actually use nuclear weapons, neither group of states categorized under (i) nor (ii) is expected to join a NUBT, as is discussed earlier in this paper. The vital role to be played by the states categorized under (iv) in achieving a NUBT has been discussed already in Chapter II. Here in this chapter, we discuss the role to be played by non-NWSs depending on nuclear weapons – the states in group (iii) – in relation to a NUBT.

19. Non-NWSs depending on nuclear weapons are military allies of the NWSs. They include NATO member states, states in the Asia-Pacific region that have concluded a bilateral security treaty with the United States, and member states of the Collective Security Treaty Organization. There seem to be various cases in terms of the specific ways in which these states rely on nuclear weapons in their security policies. In some cases, their cooperation with NWSs is extensive enough to station nuclear weapons on the soil of non-NWSs and to share operational details, and in other cases the non-NWSs oblige NWSs to protect them with extended nuclear deterrence without stationing nuclear weapons to their soil. In most cases, a critical part of the national security of those non-NWSs depends on the nuclear deterrence of their allied NWSs. Looking it from the other side, NWSs openly state that the commitment to fulfilling the obligation to protect allies is one of the key

¹³ NPT/CONF.2000/28 (Parts I and II), P.15, and NPT/CONF.2010/50 (vol. I), P. 21

¹⁴ A/68/514, Para. 41, Oct. 9, 2013

¹⁵ A/68/514, Para. 42, Oct. 9, 2013

objectives of their nuclear forces.¹⁶ Therefore a policy shift of the non-NWSs from nuclear dependency to non-dependency would directly contribute to the nuclear disarmament efforts of the NWSs.

B. Diminishing the Role of Nuclear Weapons in Security Policies

20. The argument that actions taken by non-NWSs to diminish the role of nuclear weapons in their security policy would contribute to the global nuclear disarmament efforts has already been brought forward in recent multilateral fora for nuclear disarmament. In the review process of the NPT, diminishing the role of nuclear weapons and reporting its implementation have been required of NWSs merely up until the year 2010¹⁷. Thereafter, however, an argument occurred that such requests should be addressed not only to NWSs but also to non-NWSs that are under military alliance with NWSs. It is reported that such discussions appeared in the 2013 Open-ended Working Group sessions.¹⁸ As a result, all states concerned were called upon to review their military and security policies to reduce the role and significance of nuclear weapons therein, in the draft final report of the 2015 NPT Review Conference.¹⁹

21. The political attitude toward the NUBT that are to be taken by non-NWSs depending on nuclear weapons, should be examined under the theme of how they can reduce the role of nuclear weapons in their national security policy. There will be no significant difference, from the viewpoint of non-NWSs depending on nuclear weapons, between supporting and joining a CNWC or a NBT and supporting and joining a NUBT in that all such treaties contradict with their security policy to depend on nuclear weapons. However, there is a big difference between the two from the viewpoint of NWSs, considering their direct social and economic impact, including losses in the industrial development and employment. Therefore it is a more feasible option for non-NWSs depending on nuclear weapons to consider joining a NUBT than to join a CNWC, as a first step policy change to reduce their dependence on nuclear weapons.

C. Possible Approach of Non-NWSs to a NUBT

22. There will be different approaches for non-NWSs depending on nuclear weapons in their pursuance to support and join a NUBT, reflecting the diversity of their regional security environment as well as their historical, cultural and religious background. In some cases, it will be appropriate to adopt a policy to establish a NWFZ first. In other cases, it may be possible to pursue a direct subscription to a NUBT possibly without damaging the alliance relationship with NWSs. In either case, it is required to act with a sense of urgency to break the stalemate of nuclear disarmament based on the principles of concreteness and ethicality.

23. Not all non-NWSs under military alliance with NWSs depend on nuclear weapons in their security policies. There already exist such non-NWSs under military alliance as to have chosen a policy to denounce and exclude the role of nuclear weapons and denounce them. They are some states that are members of the Bangkok Treaty or the Central Asia NWFZ Treaty. They are under a kind of regional cooperative security system which does not depend on nuclear weapons through a NWFZ treaty. These states find no difficulty in joining a NUBT; on the contrary, they are especially qualified to be an initiator of the NUBT negotiation, as was discussed in chapter II of this paper. This fact demonstrates a

¹⁶ For instance, the United States “Nuclear Posture Review Report”, April 2010

¹⁷ NPT/CONF.2010/50 (vol. I), P. 21

¹⁸ A/68/514, Para. 44, Oct. 9, 2013

¹⁹ NPT/CONF.2015/WP.58 Para. 154 Item 7, P. 22

non-NWS depending on nuclear weapons could open the way to joining a NUBT by means of seeking the establishment of a NFWZ.

24. In this context, the possibility of establishing NWFZs in Northeast Asia and Eastern Europe should be examined. Northeast Asia is a region where people experienced wartime atomic bombings, and many survivors still live in sufferings across national borders. Also it is the region where the tangible danger of the use of nuclear weapons persists in this moment when high military tension continues to prevail since the 1953 armistice of Korean War. Non-NWSs depending on nuclear weapons in this region can contribute to promoting a NUBT by setting the goal to establish a Northeast Asia NWFZ. On the other hand, it would be possible that some states in Eastern Europe establish an Eastern Europe NWFZ in the first place, while NATO as an organization should be denuclearized eventually. In particular, the establishment of a NWFZ in the East Europe area adjacent to Russia will contribute greatly to ease the tension in Europe. It is of great significance if some non-NWSs in this area take the initiative to establish a NWFZ and to support and join a NUBT.

25. Also other possibilities could be considered for non-NWSs within NATO to approach a NUBT. Europe has the history of creating the International Red Cross movement from their experiences of the repeated devastation of wars. The movement has played a critical role in advancing the recent “Humanitarian Initiative”. Also there is a strong religious leadership exemplified by Pope Francis’ recent address to the UN General Assembly in which nuclear weapons were strictly criticized from the fundamental point of view referring to the UN Charter.²⁰ In taking advantage of those ethical backgrounds of the civil societies in European states, it seems to be possible that non-NWSs within NATO could come to participate in a NUBT. With various responses to a NUBT appearing in non-NWSs in Europe, a new thinking might emerge to create further changes.

26. We emphasized in the last paragraph of Chapter II that a NUBT is a partial legal measure to be attained in the first phase in a short timeframe. It is expected that further views over the second phase and beyond to reach a NBT and a CNWC will be presented in various ways, depending especially on how non-NWSs relying on nuclear weapons respond to a NUBT, as we have discussed in this Chapter III. Needless to say, efforts to promote a NBT and a CNWC should be continued in parallel.

²⁰ Pope Francis’ address at United Nations General Assembly, Sept.25, 2015
<http://statements.unmeetings.org/media2/7651291/pope-francis-eng-.pdf>